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FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Aug 29, 2023

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF WASHINGTON

JESSE REYES, et al.,

Plaintiffs,

v.

BRENDA CHILTON, in her official capacity as Benton County Auditor and Canvas Review Board member, et al,

Defendant(s).

No. 4:21-CV-05075-MKD

SIXTH BENCH TRIAL
SCHEDULING ORDER

ECF No. 192

Before the Court is the parties' Joint Motion to Set the Scheduling Order Per Court Order, ECF No. 192. On August 16, 2023, the Court suspended the schedule in this case due to conflicts on the Court's calendar. ECF No. 190. The parties present new pretrial deadlines for a trial on February 5, 2024. ECF No. 192.

Accordingly, **IT IS HEREBY ORDERED:**

1. The parties' Joint Motion to Set the Scheduling Order Per Court Order, **ECF No. 192**, is **GRANTED**.

1 **2. General Court Procedures**

2 Pursuant to Fed. R. Civ. P. 16(b)(4), the dates set forth in this Order may be
3 amended **only** by Order of the Court and upon a showing of good cause. Pursuant
4 to Fed. R. Civ. P. 29, the parties may stipulate to other procedures governing or
5 limiting discovery, except the dates set forth in this Order.

6 Counsel shall review and employ Local Civil Rule (LCivR) 83.1 (Civility)
7 and Washington Rule of Professional Conduct 3.4 (Fairness To Opposing Party
8 And Counsel).

9 **2. Sealed Documents**

10 Any and all sealed documents shall be filed by the parties under the sealed
11 event as a sealed document. The parties are not required to file a separate motion
12 to seal a document. The parties shall file any objections to a sealed document by
13 **no later than five days** after the filing of the sealed document. The Court will
14 thereafter review the sealed document and any objections filed to determine
15 whether the document should be unsealed.

16 Any party filing a sealed document shall email
17 dimkeorders@waed.uscourts.gov to inform the Court of the filing. The email shall
18 note the ECF number of the sealed document and the general nature of the
19 document.

1 **3. Motion Practice**

2 **A. Notice of Hearing**

3 Parties are to comply with LCivR 7(i) when noting motions for hearing. If
4 oral argument is sought by a party, counsel shall first confer and determine an
5 agreeable hearing date and time, and then contact the Courtroom Deputy at
6 (509) 943-8172 to confirm the Court's availability for the agreed-upon hearing
7 date and time. All non-dispositive motion hearings shall be conducted by video,
8 unless in-person argument is approved by the Court. The parties may use cellular
9 phones for telephonic hearings, but not in speaker mode and provided the caller is
10 in an area with adequate cellular service and minimal background noise. Landline
11 phones may not be used in speaker mode. All phones must be muted unless
12 addressing the Court. Dispositive motion hearings in which oral argument has
13 been requested will be set for in-person appearance, unless otherwise directed by
14 the Court. If the parties seek to request the dispositive motion be heard by video,
15 counsel shall contact the Courtroom Deputy.

16 **B. Motions to Expedite**

17 If there is a need to have a motion heard on an expedited basis, the party
18 must file a motion to expedite and an accompanying memorandum (or declaration)
19 establishing the need for an expedited hearing. The motion shall be noted for
20 hearing, without oral argument, no earlier than seven days after the filing of the

1 motion, or two days after the date of filing with prior permission from the Court.
2 Pursuant to local rule, motions (including stipulated motions) may **not** be noted for
3 hearing for the same day they are filed. *See LCivR7(i)(2).*

4 **C. Citing Previously Filed Documents**

5 All references to a previously filed document shall cite to the electronic case
6 filing (ECF) record number and page number within that ECF record, in the
7 following format, “ECF No. __ at __.” Such documents shall not be attached as
8 exhibits.

9 **D. Reliance on Deposition Testimony**

10 When a party relies on deposition testimony to support a position it takes in
11 support or opposition to an issue, that party shall provide the Court with the
12 pertinent excerpts of the deposition testimony relied upon and shall cite to page
13 and line numbers of the deposition it believes supports its position. *See generally*
14 LCivR 56(c). Submission of the entire deposition and/or failure to cite to specific
15 portions of the deposition may result in the submission being stricken from the
16 record. *See Orr v. Bank of America*, 285 F.3d 764, 774-75 (9th Cir. 2002).

17 **E. Supplemental Responses or Replies**

18 No supplemental responses or supplemental replies to any motion may be
19 filed unless the Court grants a motion to file such documents.

20 **F. Motions to Reconsider**

1 Motions to reconsider are disfavored. Motions must show manifest error in
2 the prior ruling or reveal new facts or legal authority which could not have been
3 brought to the Court's attention earlier. The motion shall be noted for expedited
4 hearing without oral argument seven days after it is filed. No response to a motion
5 for reconsideration need be filed unless requested by the Court. No motion for
6 reconsideration will be granted without such a request by the Court.

7 **G. Decisions on Motions**

8 The parties may call to inquire about the status of a decision on a motion if
9 the Court has not issued an order within **30 days after** the hearing on said motion.

10 **4. Witness/Exhibit Lists**

11 Witness/Exhibit lists shall be filed and served and exhibits made available
12 for inspection or copies provided to the parties on or before the date indicated in
13 the Summary of Deadlines below.

14 **A. Witness Lists**

15 Witness lists shall include a brief description of the witness, a brief summary
16 of the witness' anticipated testimony, whether the witness will be called as an
17 expert, and any known trial date/time conflicts the witness may have.

18 **B. Exhibit Lists**

19 Exhibit lists shall include a brief description of the exhibit. All exhibits shall
20 be pre-marked; Plaintiffs' exhibits shall be numbered 1 to 999; Defendants'

1 exhibits shall be numbered 1000 to 1999. Exhibits shall be marked in the lower
2 right corner of the exhibit when practicable.

3 **C. Objections**

4 Objections to witnesses/exhibits shall be filed and served on or before the
5 date indicated in the Summary of Deadlines below, **and shall be heard at the**
6 **pretrial conference.** All objections to witnesses shall set forth a legal basis and
7 explanation for the objection. Objections to an exhibit or portion thereof shall be
8 accompanied by a full and complete copy of the exhibit in question and a short
9 legal explanation for the objection. The party seeking the admission of the witness
10 or exhibit has **five** days, excluding federal holidays and weekends, to file a
11 response to the opposing party's objection; no reply shall be filed.

12 **5. Deposition Designations**

13 **A. Generally**

14 Designation of substantive, as opposed to impeachment, deposition or prior
15 testimony to be used at trial shall be highlighted – in yellow by Plaintiff or in blue
16 by Defendant – and each party shall serve a complete, highlighted transcript of the
17 deposition or prior testimony on or before the date indicated in the Summary of
18 Deadlines below.

1 **B. Cross-Designations**

2 Cross-designations shall be highlighted – in yellow by Plaintiff or in blue by
3 Defendant – in the transcript containing the opposing party's initial designations
4 and shall be served but not filed on or before the date indicated in the Summary of
5 Deadlines below.

6 **C. Objections**

7 All objections to designated deposition or prior testimony and the legal bases
8 for the objections, shall be filed and served on or before the date indicated in the
9 Summary of Deadlines below. Any designated deposition or prior testimony
10 objected to shall be underlined in black in a complete yellow/blue highlighted copy
11 of the deposition/prior testimony transcript described above. A paper copy of the
12 underlined document shall be filed and served with the objections. The party
13 seeking admission of the testimony has **five days**, excluding federal holidays and
14 weekends, to file a response; no reply shall be filed. If the deposition was
15 videotaped, and the videotape is to be used at trial, the party seeking to use the
16 videotaped deposition shall indicate the relevant portion on both the written
17 transcript and the videotape. Similarly, objections shall be made on the written
18 transcript as explained above along with the applicable time stamp on the video
19 tape noted. All objections to deposition and prior testimony designations shall be
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1 heard and resolved at the pretrial conference with the videotape available for
2 display.

3 **6. Motions in Limine**

4 All unresolved substantive or evidentiary issues that may foreseeably arise
5 during trial shall be addressed by motions in limine to be filed and served on or
6 before the date indicated in the Summary of Deadlines below. Such motions will
7 be addressed and resolved at the pretrial conference. However, motions in limine
8 may not reargue issues already decided by the Court.

9 **7. Pretrial Order**

10 **A. Generally**

11 A Joint Proposed Pretrial Order prepared in accordance with LCivR 16(e)
12 shall be filed on or before the date indicated in the Summary of Deadlines below,
13 and a copy e-mailed, in Microsoft Word format, to
14 dimkeorders@waed.uscourts.gov.

15 **B. Exhibit List**

16 The list of exhibits contained in the Joint Proposed Pretrial Order shall
17 reflect the exhibit marking scheme described above. In preparing the Joint
18 Proposed Pretrial Order, the parties shall confer regarding duplicative exhibits and
19 determine which party will submit such exhibits for trial.

1 **8. Trial Briefs, Proposed Findings of Fact and Conclusions of Law**

2 **A. Generally**

3 Trial briefs and proposed findings of fact and conclusions of law shall be
4 filed and served on or before the date indicated in the Summary of Deadlines
5 below. Counsel shall email courtesy copies of their proposed findings of fact and
6 conclusions of law in Microsoft Word to dimkeorders@waed.uscourts.gov.

7 **B. Trial Brief Length**

8 Trial briefs shall not exceed 20 pages without prior court approval. To
9 obtain court approval, a party must file a motion to file an overlength brief,
10 demonstrating good cause why supplemental briefing is necessary.

11 **9. Pretrial Conference**

12 A pretrial conference will be held on **Monday, January 22, 2024, at 1:30**
13 **p.m.**, in Richland Courtroom 189. The parties and counsel may request to appear
14 at the pretrial conference by video. All counsel trying the case must be present at
15 the pretrial conference.

16 **10. Trial**

17 The bench trial shall commence on **Monday, February 5, 2024, at 9:00**
18 a.m., in Richland Courtroom 189. Counsel shall appear at 8:30 a.m. on the first
19 day of trial.

1 **11. Summary of Deadlines**

2 Witness and exhibit lists: 3 Lists filed and served: 3 Objections filed and served:	November 1, 2023 November 9, 2023
4 Deposition designations: 5 Designated transcripts served: 5 Cross-designations served: 6 Objections filed and served:	November 1, 2023 November 8, 2023 November 15, 2023
7 All motions <i>in limine</i> filed 8 Responses: 8 Replies:	November 9, 2023 November 17, 2023 November 22, 2023
9 Joint Proposed Pretrial Order filed and 9 emailed to the Court	January 8, 2024
10 Trial briefs, findings of fact and 10 conclusions of law	January 8, 2024
11 PRETRIAL CONFERENCE	January 22, 2024 1:30 p.m. - Richland
13 Exhibits for trial	2 Weeks Before Trial
14 FINAL PRETRIAL CONFERENCE	February 5, 2024 8:30 a.m. - Richland
16 BENCH TRIAL	February 5, 2024 9:00 a.m. - Richland

17 **IT IS SO ORDERED.** The District Court Executive is directed to enter this

18 Order and provide copies to the parties.

1 DATED August 29, 2023.

2 *s/Mary K. Dimke*
3 MARY K. DIMKE
4 UNITED STATES DISTRICT JUDGE

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